

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
Southern Division

In re

LARRY T. GOWER &
GAIL N. GOWER

Debtors

Bankruptcy Case
No. 94-13839

Chapter 13

MEMORANDUM

The Debtors have filed a motion to quash a garnishment on Mr. Gower's earnings from his employer, Shaw Industries, and to hold the State of Alabama in contempt for violation of the automatic stay. When the Gowers filed their chapter 13 bankruptcy case, Mr. Gower's wages from Shaw Industries were being garnished by the State of Alabama. The state obtained the garnishment to collect past due child support owed to Paulette Gower Frazier. The garnishment was issued by the Circuit Court of Morgan County, Alabama.

The Gowers filed their chapter 13 case on October 26, 1994. They proposed a chapter 13 plan to pay their unsecured debts in full, including the past due child support. They listed Paulette Gower as a creditor. They listed the Circuit Court of Morgan County twice, once as a creditor and again as agent for Paulette Gower. The State of Alabama Department of Human Resources was not specifically listed as a creditor.

The file includes a certificate that notice of the chapter 13 case was served on the listed creditors and others on November 8, 1994. The meeting of creditors was postponed from November 28 to December 12. The Gowers' attorney certified that he served notice of the postponement on the same parties.

On November 25, 1994, the court received a proof of claim for the child support arrearage. Attorney Robert Tweedy filed the proof of claim on behalf of Paulette Gower Frazier. From the proof presented at the hearing on this motion, it appears Mr. Tweedy is the attorney for the State of Alabama Department of Human Resources. On December 12, 1994, the court confirmed the Gowers' chapter 13 plan and sent an order to Shaw Industries to withhold and pay to the chapter 13 trustee \$130 per week. The child support garnishment continued after this order was entered. As a result, Shaw Industries withheld both the \$130 per week for the chapter 13 payment and the \$103 per week for the child support garnishment. On December 23, 1994, the Gowers filed this motion. The motion alleged that the garnishment through the Circuit Court of Morgan County was for the benefit of the State of Alabama Department of Human Services. The record includes a copy of a motion filed in the state court proceeding on or about December 7, 1994, signed by Attorney Tweedy on behalf of the State of Alabama Department of Human Resources. The motion asks the Circuit Court of Morgan County to release the garnishment.

The Gowers rely on Bankruptcy Code § 362. It imposed an automatic stay as soon as the Gowers filed their chapter 13 case. The automatic stay enjoined almost all attempts to collect debts owed by Mr. or Mrs. Gower when they filed the chapter 13 case. 11 U.S.C. § 362(a). The Gowers asked this court to stop the garnishment and to hold the State of Alabama, the state court, Paulette Gower Frazier, and Shaw Industries in contempt of court for violating the automatic stay.

The Gowers' attorney certified service of the motion and notice of the hearing on Paulette Gower Frazier, the Morgan County Circuit Court, Shaw Industries, and attorney Robert Tweedy on behalf of the Alabama Department of Human Services. The motion to

quash the garnishment came on for hearing on January 23, 1995. Paulette Gower Frazier filed a response to the motion and was represented at the hearing by attorney Robert Peters. No one appeared on behalf of the State of Alabama.

The state obviously did not attempt to prove that its failure to stop the garnishment resulted from inadequate notice of Mr. Gower's chapter 13 case. The facts lead the court to presume that the state had notice in time to stop the garnishment before it became a problem. *Bratton v. Yoder Co. (In re Yoder Co.)*, 758 F.2d 1114 (6th Cir. 1985).

The state had a duty to stop the garnishment when it learned of Mr. Gower's chapter 13 case. 11 U.S.C. §§ 362(a), § 362(b)(2)(B) & § 1306(a)(2); *O'Connor v. Methodist Hospital (In re O'Connor)*, 42 B.R. 390 (Bankr. E. D. Ark. 1984) (duty to stop garnishment); *Elder v. City of Thomasville (In re Elder)*, 12 B.R. 491 (Bankr. M. D. Ga. 1981) (same); see also *O'Neal v. Beneficial of Tennessee, Inc. (In re O'Neal)*, 165 B.R. 859 (Bankr. M. D. Tenn. 1994). The continuation of the garnishment interfered with Mr. Gower's performance of the chapter 13 plan and forced the Gowers to commence this proceeding. The facts leave no doubt that the state violated the automatic stay.

In light of the state's actions and its failure to appear and defend, the court must conclude that the state willfully violated the stay. The state should be held liable to the Debtors for their costs incurred to have the garnishment stopped and must account for the money it received on the garnishment after the Gowers filed their chapter 13 case. 11 U.S.C. § 362(h); *In re Whitefield*, 165 B.R. 867, 30 Collier Bankr. Cas. 2d 2097 (Bankr. M. D. Tenn. 1994); 11 U.S.C. § 106(a) (as amended by the Bankruptcy Reform Act of 1994); *Elder v. City*

of Thomasville (In re Elder), 12 B.R. 491 (Bankr. M. D. Ga. 1981). The court finds that \$350 is a reasonable amount to reimburse the Debtors for the costs incurred by them in obtaining this relief.

The court has been notified that the state has now released the garnishment. The court need not order it to be released. At the hearing the Debtors did not pursue their claims against Mrs. Gower and Mr. Gower's employer, Shaw Industries.

The affirmative relief requested by Mrs. Gower in her "counter-complaint" was determined in the order confirming debtors' plan. 11 U.S.C. §1327.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052. An appropriate order will be entered.

At Chattanooga, Tennessee.

BY THE COURT

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE

[entered April 12, 1995]

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EASTERN DISTRICT OF TENNESSEE
Southern Division

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ORDER

For the reasons stated in a Memorandum Opinion filed contemporaneously
herewith,

IT IS ORDERED that the State of Alabama shall pay to the Chapter 13
Trustee the sum of \$350.00 for the use and benefit of Debtors;

IT IS FURTHER ORDERED that Attorney James S. Stephens is allowed
additional attorney fees of \$350.00 for representation of the Debtors in this matter;

IT IS FURTHER ORDERED that the State of Alabama shall file a statement
of account showing the amount it received on the garnishment after the Gowers filed their
chapter 13 case and shall amend its proof of claim to reflect those payments;

IT IS FURTHER ORDERED that the chapter 13 trustee shall make no further
payments on the State of Alabama's claim for past child support until such time as the
State of Alabama has complied with this order; and

IT IS FURTHER ORDERED that the court withholds any ruling at this time on the counterclaim by Mrs. Gower in her response to the debtors' motion.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[entered April 12, 1995]